



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 3, 2021

Ms. Erika Orr
Public Information Lead
Dallas Independent School District
9400 North Central Expressway
Dallas, Texas 75231

OR2021-30685

Dear Ms. Orr:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 914656 (Reference Nos. R020744-081221 and R020837-090921).

The Dallas Independent School District (the "district") received two requests from different requestors for bid tabulations and pricing information pertaining to bid numbers CJ-205481, CJ-205488, KC-205736, KC-205792, KC-206129, KC-206131, and KC-206246. The district states it released some information. The district claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the district states release of the submitted information may implicate the proprietary interests of several third parties. Accordingly, the district states, and provides documentation showing, it notified the interested third parties of the requests for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from DFA Dairy Brands Fluid, LLC d/b/a Oak Farms Dairy ("Oak Farms"). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government

Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have received comments from only Oak Farms explaining why the information at issue should not be released. Thus, we have no basis to conclude the remaining third parties have a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the district may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Next, the district informs us some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2021-26538 (2021) and 2021-26168 (2021). In Open Records Letter No. 2021-26538, we determined the district may withhold the information at issue pertaining to bid number KC-206131 under section 552.104 of the Government Code. In Open Records Letter No. 2021-26168, we determined the district may withhold the information we marked pertaining to bid number KC-206129 under section 552.104 of the Government Code and must release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, the district may rely on Open Records Letter Nos. 2021-26538 and 2021-26168 as previous determinations and withhold and release the information at issue in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address the arguments against disclosure of the submitted information, which was not at issue in the previous rulings.

Next, we note some of the submitted information has been published on a publicly available website. Section 552.007 of the Government Code provides information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Accordingly, the district may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although the district seeks to withhold the previously released information under section 552.104 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See* Gov't Code § 552.007; Open Records Decision No. 177 at 3 (1977). Therefore, the district may not withhold the information published on a publicly available website, which we marked, under section 552.104 of the Government Code. In addition, we note Oak Farms now seeks to withhold some of the information that has been previously released under sections 552.110 and 552.1101 of the Government Code. Because information subject to sections

552.110 and 552.1101 is deemed confidential by law, we will address Oak Farms' claims under sections 552.110 and 552.1101 for any previously released information, as well as the district's and Oak Farms' arguments against disclosure of the information which was not previously released.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would "harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find the district has established the release of some of the information at issue would harm the district's interests by providing an advantage to a competitor or bidder in a particular competitive situation that is set to reoccur or for which the district has demonstrated there is a specific and demonstrable intent to enter into the competitive situation again in the future. Accordingly, we conclude the district may withhold the information we marked under section 552.104(a) of the Government Code.¹ However, we find the district has failed to demonstrate the applicability of section 552.104 to any of the remaining information. Thus, we conclude the district may not withhold any of the remaining information under section 552.104(a).

Section 552.110(c) of the Government Code states:

Except as provided by Section 552.0222, commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is [excepted from required disclosure].

Gov't Code § 552.110(c). Section 552.1101 of the Government Code provides, in relevant part:

(a) Except as provided by Section 552.0222, information submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

Id. § 552.1101(a). Additionally, we note section 552.0222(b) lists certain types of information to which sections 552.110 and 552.1101 do not apply. *See id.* § 552.0222(b). Oak Farms argues its information at issue consists of commercial or financial information subject to section 552.110(c). Upon review, however, we find some of the remaining information at issue is subject to section 552.0222(b), and may not be withheld on the basis of section 552.110(c). Additionally, we find Oak Farms has failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the district may not withhold any of the remaining information at issue under section 552.110(c).

Oak Farms also asserts disclosure its information at issue would reveal an individual approach to discounts, pricing methodology, cost data, or other pricing information that will be used in future solicitation or bid documents and give advantage to a competitor. Upon review, however, we find some of the information consists of information subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101(a). *See id.* § 552.0222(b). Additionally, we find Oak Farms has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is subject to section 552.1101(a). Therefore, the district may not withhold any of the remaining information at issue under section 552.1101(a).

In summary, the district may rely on Open Records Letter Nos. 2021-26538 and 2021-26168 as previous determinations and withhold and release the information at issue in accordance with those rulings. The district may withhold the information we marked under section 552.104(a) of the Government Code. The district must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jm

Ref: ID# 914656

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Third Party
(w/o enclosures)